



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Francis L. Daniel  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

#### **CITY OF FRANKLIN**

#### **VPDES Permit No. VA0023922**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and the City of Franklin for the purpose of resolving certain alleged violations of environmental law and/or regulations.

### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Regulation” means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Permit” means VPDES Permit No. VA0023922 which was issued June 23, 2004 and expires June 22, 2009.

**SECTION C: Finding of Facts and Conclusions of Law**

1. The City of Franklin (“the City”) operates a wastewater treatment plant which is located at 501 South Main Street, Franklin, in Southampton County (“facility”), and is subject to the Permit which authorizes the City to discharge treated wastewater via outfall 001.
2. Part I.A of the Permit includes monthly and weekly average loading and concentration limits for total suspended solids (“TSS”), current monthly and weekly average concentration limits for total recoverable copper, monthly and weekly average concentration limits for ammonia-nitrogen, and a monthly average concentration limit for fecal coliform.
3. The Permit requires the City to sample and monitor discharges at outfall 001 and submit a discharge monitoring report (“DMR”) to DEQ no later than the tenth day of each month following the monitoring period.
4. The City submitted DMRs to DEQ documenting the effluent characteristics for the May, June, September and December 2005 monitoring periods indicating the following results:

<b>Monitoring Period</b>	<b>Parameter</b>	<b>Reported Result</b>	<b>Permit Limit</b>
May 2005	fecal coliform (monthly average concentration)	327 n/cml	200 n/cml
June 2005	fecal coliform (monthly average concentration)	214 n/cml	200 n/cml
June 2005	ammonia-nitrogen (monthly average concentration)	2.0 mg/l	1.9 mg/l
June 2005	ammonia-nitrogen (weekly average concentration)	2.0 mg/l	1.9 mg/l
September 2005	TSS (weekly average concentration)	46.6 mg/l	45 mg/l
September 2005	total recoverable copper (monthly average)	10 ug/l	4.8 ug/l
September 2005	total recoverable copper (weekly average)	10 ug/l	4.8 ug/l
December 2005	total recoverable copper (monthly average)	5.7 ug/l	4.8 ug/l
December 2005	total recoverable copper (weekly average)	5.7 ug/l	4.8 ug/l

5. The City violated the Permit by exceeding the monthly and weekly average concentration limit for TSS, the current monthly and weekly average concentration limits for total recoverable copper, the monthly and weekly average concentration limits for ammonia-nitrogen, and the monthly average concentration limit for fecal coliform as reported for the May, June, September and December 2005 monitoring periods.
6. On July 12, 2005, DEQ issued a warning letter to the City advising the City of the exceedance of the Permit limit for fecal coliform monthly average concentration for the May 2005 monitoring period.
7. On July 21, 2005, DEQ received a response from the City regarding the July 12, 2005 warning letter referenced in paragraph 6 of this Order. The City indicated in the letter that although the system appeared to be performing properly, the City suspected that something entered the system affecting the biological population of the facility's tanks.
8. On August 9, 2005, DEQ issued a warning letter to the City advising the City of exceedances of the Permit limits for fecal coliform monthly average concentration and ammonia-nitrogen monthly and weekly average concentration for the June 2005 monitoring period.
9. By letter dated August 18, 2005, the City responded to the August 9, 2005 warning letter referenced in paragraph 8 of this Order. In its letter the City indicated that an escalation in biological oxygen demand and TSS values caused an increase in the turbidity of the facility's effluent which in turn hindered the ultraviolet disinfection which resulted in high fecal coliform counts. The City attributed the ammonia-nitrogen exceedance to a brief upset due to maintenance activities.
10. On February 17, 2006, DEQ issued Notice of Violation ("NOV") No. W2006-02T-0002 to the City advising the City of the exceedances of the Permit limit for TSS weekly average concentration for the September 2005 monitoring period and current limits for total recoverable copper weekly and monthly average concentration for the September and December 2005 monitoring periods.
11. On February 26, 2006, DEQ received a response from the City regarding the referenced NOV. The City indicated that the Permit limit exceedance for TSS was due to denitrification and the City had implemented sludge waste procedures to resolve the TSS exceedance. Additionally, the City indicated that it was working with consultants to identify the cause of the total recoverable copper exceedances and to develop a corrective action plan to achieve compliance with the total recoverable copper current limit. The City has not reported any exceedances of its Permit limits since the December 2005 monitoring period.

#### **SECTION D: Agreement and Order**

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d) orders the City, and the City agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders the City, and the City voluntarily agrees to pay a civil charge of \$4,300 in settlement of the violations cited in this Order. The payment shall include the City's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the City, for good cause shown by the City, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced warning letters and Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the City admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The City consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The City declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the City intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City. Notwithstanding the foregoing, the City agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2<sup>nd</sup> day of June, 2006.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Director  
for David K. Paylor, Director  
Department of Environmental Quality

The City voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 4.12.06

Commonwealth of Virginia  
City/County of Franklin

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of  
April, 2006, by Rowland L. Taylor, who is  
(name)

City Manager of the City of Franklin, on behalf of the City.  
(title)

Eria M. Gurner  
Notary Public

My commission expires: July 31, 2009

## **APPENDIX A**

The City of Franklin shall:

1. Within 60 days of the effective date of this Order, submit to DEQ Tidewater Regional Office for its review and approval, a corrective action plan and schedule to achieve compliance with the current total recoverable copper limit of 4.8 ug/l. Upon approval, the corrective action plan and schedule shall become a part of this Order and enforceable under the terms of this Order.
2. Implement and complete the corrective action plan and schedule as approved by DEQ.
3. Use best management practices at all times to properly operate and maintain the facility to achieve compliance with the conditions of the Permit.
4. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director  
Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, VA 23462